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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,682	04/14/2004	Michel Perricaudet	EX95001-US-A	5373
29693	7590	07/10/2006	EXAMINER	
WILEY, REIN & FIELDING, LLP ATTN: PATENT ADMINISTRATION 1776 K. STREET N.W. WASHINGTON, DC 20006			CHEN, SHIN LIN	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,682

Applicant(s)

PERRICAUDET ET AL.

Examiner

Shin-Lin Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-44 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, 7-26 and 28-37, drawn to a composition comprising an immunosuppressive agent and a recombinant adenovirus comprising a first recombinant DNA encoding a protein and a second recombinant DNA encoding an adenoviral gp19k protein, and a method for expressing a sequence of interest from an adenovirus comprising consecutively or simultaneously administering to a subject an immunosuppressive agent and a recombinant adenovirus.

Group II, claim(s) 1-3 6-24 and 27-37, drawn to a composition comprising an immunosuppressive agent and a recombinant adenovirus comprising a first recombinant DNA encoding a ribozyme or antisense RNA and a second recombinant DNA encoding an adenoviral gp19k protein, and a method for expressing a sequence of interest from an adenovirus comprising consecutively or simultaneously administering to a subject an immunosuppressive agent and a recombinant adenovirus.

Group III, claim(s) 38-44, drawn to a method of prolonging the survival of a cell expressing a sequence of interest comprising introducing a recombinant adenovirus to a cell in an animal, wherein said recombinant adenovirus comprises a first recombinant DNA containing the sequence of interest encoding a protein and a second recombinant DNA encoding an adenoviral gp19k protein.

Group IV, claim(s) 38-44, drawn to a method of prolonging the survival of a cell expressing a sequence of interest comprising introducing a recombinant adenovirus to a cell in an animal, wherein said recombinant adenovirus comprises a first recombinant DNA containing the sequence of interest encoding a ribozyme or antisense RNA and a second recombinant DNA encoding an adenoviral gp19k protein.

2. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: A ribozyme or antisense RNA and a protein lack common property or activity and lack common core structure. Therefore, groups I and II lack common property or activity. Similarly, groups III and IV lack common property or activity. Groups I-II and groups III-IV are drawn to different scientific consideration: a method of expressing a sequence of interest from an adenovirus and a method of prolonging the survival of a cell expressing a sequence of interest. They have different objectives, method steps, reagents and dosages used,

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schedules used, response variables, and criteria of success. Thus, groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Cyclosporine, FK506, azathioprine, corticosteroid, and antibody in claims 2 and 21.

Anti-CD4, -CD-2, -CD3, -CD8, -CD28, -B7, -ICAM-1 and -LFA-1, and CTLA4Ig in claims 3 and 22.

Coding sequence for p53, aFGF, bFGF, factor VIII and factor IX in claims 34, 36 and 41.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The claims are deemed to correspond to the species listed above in the following manner:

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Cyclosporine, FK506, azathioprine, corticosteroid, and antibody in claims 2 and 21.

Anti-CD4, -CD-2, -CD3, -CD8, -CD28, -B7, -ICAM-1 and -LFA-1, and CTLA4Ig in claims 3 and 22.

Coding sequence for p53, aFGF, bFGF, factor VIII and factor IX in claims 34, 36 and 41.

The following claim(s) are generic: 2, 3, 21, 22, 34, 36 and 41.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: They represent different chemical compounds or proteins that lack common core structure or activity.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of

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record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Lin Chen whose telephone number is (571) 272-0726. The examiner can normally be reached on Monday to Friday from 9:30 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for this group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent

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Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Shin-Lin Chen, Ph.D.

A handwritten signature in black ink, appearing to read 'S. Chen'.

SHIN-LIN CHEN
PRIMARY EXAMINER